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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,956	04/07/2006	Hanka Tietschert	P08892US00/MP	8505
881 7590 07/14/2008 STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			EXAMINER NEWAY, BLAINE GIRMA	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 07/14/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,956

Applicant(s)

TIETSCHERT, HANKA

Examiner

BLAINE G. NEWAY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 23 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The Amendment filed April 23, 2008 has been entered. Claims 1-17 remain pending in the application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-13 and 17 are finally rejected under 35 U.S.C. 103 (a) as being unpatentable over Steffann (US 6,488,152) in view of Bessett (US 3,531,039). New grounds of rejection for claims 12 and 13 are necessitated by Applicant's amendment.

Regarding claim 1, Steffann discloses a package for receiving frangible products such as eggs, having a bottom part (2) with an upper rim portion extending outwards and non-planar side surfaces so as to match at least partially the outer contours of the products to be packed (figure 1). The package also has a cover part (3) with a top surface (10) and a front surface (4) which meet at an angle to form an edge (13) (figures 1 and 3). The bottom part (2) is connected to the cover part (3) by a hinge (9) so as to allow the cover part (3) to move between an open and closed position (figures 1 and 3). The front surface (4) extends down from the edge (13) and overlaps the non-planar side surface of the bottom part (2) opposite the hinge (5) when the cover part (3) is in its

closed position (figures 1 and 3). When the package is in the closed position, the hinge (9) is positioned above the level of the upper rim portion of the bottom part (2) (figure 3). For locking mechanism, Steffann discloses a package provided with retainment means comprising one or more openings (14) in the front side (4) of the cover part (3) and co-operating retainment projections (15) on the side surface of the bottom part (2) opposite to the hinge (9) (column 2 lines 45-48 and figure 2).

However, Steffann does not disclose at least one inwardly extending protrusion for locking engagement with the upper rim portion of the bottom part (2) when the package is being closed.

Bessett teaches a package i.e. egg carton with a cover part provided with at least one inwardly extending protrusion (37) for locking engagement with upper rim portion (23) of the bottom part when the package is being closed (column 3 lines 29-38 and figure 1).

It would have been obvious to one of ordinary skill in the art to substitute a locking mechanism, as for example, taught by Bessett, for the locking mechanism of Steffann wherein so doing would amount to mere substitution of one functionally equivalent locking mechanism for another within the same art and the selection of any of these locking mechanisms would work equally well in the claimed device.

Regarding claim 2, Steffann discloses a package with a bottom part (2) provided with a pattern of pockets (17) for accommodating the eggs (figure 8).

Regarding claim 3, Steffann discloses the package as being a molded product (column 5 lines 12-13). The examiner also notes that this is a product-by-process claim.

Regarding claim 4, Steffann discloses the package molded as one piece (column 5 lines 14-15). The examiner also notes that this is a product-by-process claim.

Regarding claim 5, Steffann discloses a package made of molded pulp (column 5 lines 16-17). The examiner also notes that this is a product-by-process claim.

Regarding claim 6, Steffann teaches the cover part on the front side provided with an edge portion (13). The protrusions (37) of Bessett will be provided substantially adjacent to the edge portion (13) because the protrusions are engaging the upper rim portion of the package.

Regarding claim 7, Bessett teaches locking engagement with flange-like upper rim portions between adjacent pockets.

Regarding claim 9, Bessett teaches a package with a flange like upper rim portion (23) of the bottom part further provided with outwardly extending retainment flaps (24a and e) (figure 1).

Regarding claim 10, Bessett teaches a package with a bottom part provided with outwardly extending retainment flaps (24a and e) placed for engagement with the engagement surface of the protrusions (37) of the cover part (column 3 lines 29-38 and figure 1). By doing so the locking engagement of the protrusions with the upper rim portion of the bottom part takes place at the flange like upper rim portion, more particularly at the outwardly extending retainment flaps (24a and e) (figure 1).

Regarding claim 11, Bessett teaches a package with flaps placed for engagement with an edge portion i.e. outwardly extending protrusions of openings (36) (column 3 lines 25-38). By doing so the locking engagement of the protrusions with the

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upper rim portion of the bottom part takes place at flange like upper rim portion, more particularly at the outwardly extending retainment flaps (24a and e) (figure 1).

Regarding claim 12, Steffann discloses a package for receiving frangible products such as eggs, having:

a bottom part (2) with an upper rim portion extending outwards and non-planar side surfaces so as to match at least partially the outer contours of the products to be packed (figure 1);

a cover part (3) with a top surface (10) and a front surface (4) which meet at an angle to form an edge (13) (figures 1 and 3);

the bottom part (2) being connected to the cover part (3) by a hinge (9) so as to allow the cover part (3) to move between an open and closed position (figures 1 and 3);

the front surface (4) extending down from the edge (13) and overlapping the non-planar side surface of the bottom part (2) opposite the hinge (5) when the cover part (3) is in its closed position (figures 1 and 3);

the hinge (9) positioned above the level of the upper rim portion of the bottom part (2) (figure 3); and

the bottom part (2) being provided with outwardly extending protrusions 15 for locking engagement with the cover part (3) (figures 1 and 2)

Steffann fails to disclose the bottom part (2) adjacent to the upper rim portion being provided with at least one outwardly extending protrusion for locking engagement with co-operating means provided on the cover part (3) (figures 1 and 2).

Bessett teaches a package i.e. egg carton with a cover part provided with at least one inwardly extending protrusion (37) for locking engagement with upper rim portion (23) of the bottom part when the package is being closed (column 3 lines 29-38 and figure 1).

It would have been obvious to one of ordinary skill in the art to have substituted a locking mechanism, as for example, taught by Bessett, for the locking mechanism of Steffann wherein so doing would amount to mere substitution of one functionally equivalent locking mechanism for another within the same art and the selection of any of these locking mechanisms would work equally well in the claimed device.

Regarding claim 13, Bessett teaches the co-operating means (14) on the cover part (3) being is one or more openings (36) in the front surface of the cover part (figures 1 and 2).

Regarding claim 17, Bessett further teaches the cover part lockingly engaging with the upper rim portion of the bottom part (column 3, lines 34-38).

Claims 1, 8 and 14-16 are finally rejected under 35 U.S.C. 103 (a) as being unpatentable over Steffann (US 6,488,152) in view of Bessett (US 3,531,039) further in view of Macchi (US 3,550,836).

Regarding claim 1, Steffann discloses a package for receiving frangible products such as eggs, having a bottom part (2) with an upper rim portion extending outwards and non-planar side surfaces so as to match at least partially the outer contours of the

products to be packed (figure 1). The package also has a cover part (3) with a top surface (10) and a front surface (4) which meet at an angle to form an edge (13) (figures 1 and 3). The bottom part (2) is connected to the cover part (3) by a hinge (9) so as to allow the cover part (3) to move between an open and closed position (figures 1 and 3). The front surface (4) extends down from the edge (13) and overlaps the non-planar side surface of the bottom part (2) opposite the hinge (5) when the cover part (3) is in its closed position (figures 1 and 3). When the package is in the closed position, the hinge (9) is positioned above the level of the upper rim portion of the bottom part (2) (figure 3).

Regarding claim 8, Steffann discloses a package provided with retainment means comprising one or more openings (14) in the front side (4) of the cover part (3) and co-operating retainment projections (15) on the side surface of the bottom part (2) opposite the hinge (9) (column 2 lines 45-48 and figure 2).

Steffann discloses all elements of the claimed invention except for at least one inwardly extending protrusion for locking engagement with the upper rim portion of the bottom part (2) when the package is closed.

Bessett teaches a package i.e. egg carton with a cover part provided with at least one inwardly extending protrusion (37) for locking engagement with upper rim portion (23) of the bottom part when the package is being closed (column 3 lines 29-38 and figure 1).

Macchi teaches providing double locking mechanisms in packages for firm locking (column 4 lines 4-16 and figure 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, having the teachings of Steffann, Bessett and Macchi, to modify the package of Steffann to include the inwardly extending protrusions of Bessett because Macchi teaches providing double locking mechanisms to firmly lock the cover section in place and to overcome the slight moment of force being exerted not fully overcome by a single locking mechanism disclosed by Steffan.

Regarding claim 14, Bessett teaches a package with a flange like upper rim portion (23) of the bottom part being provided with outwardly extending retainment flaps (24a and e) (figure 1).

Regarding claims 15 and 16, The Examiner notes that the flaps (24a and e) of the combination of Steffann, Bessett and Macchi are capable of engaging with the engagement surface of the protrusions (37) of the cover part, or with an edge portion of openings provided in the cover part.

Response to Arguments

Applicant's amendments have overcome the objections and 35 USC 112 rejections of claims 2, 6, 7, 11 and 12 from the previous.

Applicant's arguments filed April 23, 08 have been fully considered but they are not persuasive.

Applicant argues on page 3 of the Remarks that there fails to be any reasonably apparent reason why one of ordinary skill in the art would modify Stefan's package to further include the inwardly extending projections of Bessett. The examiner notes that

regarding claims 1-7 and 9-13, the locking mechanism of Steffanns' package are being substituted (not further including) by the locking mechanism of Bessett.

In response to applicant's argument on page 4 that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, for claims 1 and 8 the motivation for combining the three references is to overcome the slight moment of force being exerted that is not fully overcome by a single locking mechanism.

In response to applicant's arguments on page 3 against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

In response to arguments on page 5, the Examiner notes that the argument is not directed to the claimed features.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLAINE G. NEWAY whose telephone number is (571)270-5275. The examiner can normally be reached on M-F 7:30 AM- 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blaine G Neway/
Examiner, Art Unit 3728

7/8/2008

/Bryon P. Gehman/
Primary Examiner, Art Unit 3728